UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA

v. 16 Cr 212 (LAK)

LLOYD RODRIGUEZ,

Defendant.
- X

SENTENCING MEMORANDUM ON BEHALF
OF DEFENDANT LLOYD RODRIGUEZ

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SENTENCING MEMORANDUM ON BEHALF OF DEFENDANT LLOYD RODRIGUEZ

This Sentencing Memorandum is respectfully submitted on behalf of defendant Lloyd Rodriguez for the Court's consideration at sentencing. Mr. Rodriguez is scheduled to be sentenced on April 25, 2017.

I. PRELIMINARY STATEMENT

On October 20, 2016, Lloyd Rodriguez entered a plea of guilty to Count One of the above-captioned indictment. Count One charged him with participating in a racketeering conspiracy in violation of 18 U.S.C. § 1962(d).

Mr. Rodriguez has been in custody since his self-surrender on June 27, 2016.

II. THE PRE-SENTENCE REPORT ("PSR")

Factual objections to the PSR were submitted to the Probation Department by letter dated December 13, 2016. All of these objections and/or comments have been incorporated into the final PSR. Mr. Rodriguez has no further factual objections and no legal objections to the PSR.

According to both the PSR and the Plea Agreement, Mr. Rodriguez has a total guideline offense level of 16 and is in criminal history category I. This correlates with a guideline sentencing range of 21- 27 months.

III. 18 U.S.C. § 3553(a) FACTORS FOR THE COURT'S CONSIDERATION

In imposing sentence, this Court must consider the factors set forth in 18 U.S.C. § 3553(a), which include:

(1) the nature of and circumstances of the offense and the history and characteristics of the defendant;
(2) the need for the sentence imposed –
  A. to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  B. to afford adequate deterrence to criminal conduct;
  C. to protect the public from further crimes of the defendant; and
  D. to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
(3) the kinds of sentences available;
(4) the advisory Guidelines range;
(5) any pertinent policy statements issued by the Sentencing Commission;
(6) the need to avoid unwarranted sentence disparities; and
(7) the need to provide restitution to any victims of the offense.

Id. After considering all of those factors, this Court must "impose a sentence sufficient, *but not greater than necessary*, to comply with the purposes set forth in paragraph (2)." *Id.* (Emphasis added).

1. The Nature and Circumstances of the Offense

Mr. Rodriguez has admitted to being an associate of a group known as 2-Fly which was based around the Eastchester Gardens Public housing development in the Bronx. As an associate of this group, he agreed with others to sell marijuana and to supply it to others in and around the Eastchester Gardens housing development at various times between 2014 to 2016.

His involvement in this offense was facilitated primarily through his older brother Aaron, a co-defendant in this case. Lloyd was living at the time with his mother Diane Rodriguez in an apartment several blocks away from the Eastchester housing development. Because of his brother's position in the 2-Fly organization, Lloyd, not himself a member of the group but rather an associate, was able to sell marijuana and also supply marijuana to other 2-Fly members on occasion. Throughout these two years, however, Lloyd was not consistently involved in marijuana distribution. He had several long hiatuses each lasting several months, such as when he went to Virginia for the summer to stay with a family friend and when he was involved in a local competitive traveling basketball team. Additionally, his distribution activities were curtailed for several other months because he had gone back to high school after dropping out as the result of being the victim of two violent attacks, both unrelated to the 2-Fly organization or rival groups. Nevertheless, there were months during the time period of his involvement when he was more heavily involved in marijuana supply and distribution.[1] How he became involved in this offense relates directly to key events in his life, as detailed *infra*.

2. The History and Characteris1tics of the Defendant

Lloyd Rodriguez and his twin sister are the youngest of the five children born to his mother Diane Rodriguez. By the time Lloyd Rodriguez was born, much of the utter chaos, violence, abuse, and instability which marked the three older siblings lives was starting to wane. Mrs. Rodriguez had separated from her violent and abusive partner and begun stabilizing her life, When Lloyd and his sister reached school age, she joined the work force full time and was soon working at two jobs and focused on trying to provide a home and stable lifestyle for her family. As a result of her full time jobs, the older siblings, from very young ages, and in particular, Orlandis, the oldest brother, became substitute parents for Lloyd and his twin sister

[1] The government has acknowledged that the marijuana quantity for which he is held accountable is significantly greater than the amounts that he actually distributed but represents marijuana quantities which were foreseeable to him. We are not disputing the marijuana quantity used as the base offense level for his guideline calculations.

caring for them in the evening and at night while their mother was away at work, getting them up in the morning, preparing something to eat for breakfast, and making sure they did their homework. See Sentencing Memorandum on behalf of Aaron Rodriguez, 16 Cr 212 (LAK), Docket Entry No. 893 at 4.

As further described in the Sentencing Memorandum on behalf of Aaron Rodriguez,

> "Around the same time, the family lost their apartment when their landlord decided to sell it. Diane Rodriguez was unable to find another apartment before her Section 8 voucher ran out, and the family entered a three-year period of instability and uncertainty, couch-hopping at the homes of different relatives for a year before again entering in the shelter system. Each move required a change of school, further uprooting the children.
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> During their first year in the shelter system, the family never knew whether they were going to spend more than one night in the same place. Diane Rodriguez used her mother's Eastchester Gardens apartment to register the children for school, and they used the address as a "home base", meeting there in the evenings before heading to the Prevention Assistance and Temporary Housing (PATH) center in South Bronx, where they had to check in by 6pm. At PATH the family could wait four hours or more to be assigned a place to sleep for the night, which could be anywhere in the five boroughs. As noted by Ms. Carr,
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> The rooms were typically in old motel rooms, where all five of them crowded into one big bed or two small beds in the same room. The rooms were often dirty, and sometimes filthy and vermin-infested. The family would do their best to clean the room, and sit down to eat something before laying down to bed, which was usually after midnight. Bleary-eyed from a few hours sleep, Aaron and his family climbed back on the shuttle bus to PATH in the South Bronx, then took the bus or the train to Gloria's, picked up their backpacks, and walked to school.
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> . . . .
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> Eventually, Diane Rodriguez was given more permanent shelter placements, providing the family with a dedicated home base for months at a time. And in the Summer of 2006, after two years in the shelter system, the family was finally able to move into a subsidized apartment."

Sentencing Memorandum on behalf of Aaron Rodriguez, 16 Cr 212 (LAK), Docket Entry No. 893 at 4-5. Lloyd Rodriguez was now 10 years old.

Lloyd did well in school and, unlike his brother Aaron, avoided gang membership. However, by the age of 17, as a senior in high school, Lloyd Rodriguez' life became derailed by two random acts of violence perpetrated on him and unrelated to gang violence. In the first incident, at the age of 17, in late December 2012 or very early January 2013, he was struck in the back of his head with a bat while walking along Arthur Avenue in the Bronx. - an injury which necessitated medical treatment. Shortly thereafter, on January 13, 2013, he was attacked on the No 5 subway one evening on his way home from school. In this incident, he was surrounded by a group of young men who tried to rob him of his coat. He was stabbed twice in the head. Again he received out-patient medical treatment at Jacoby Hospital.

After this second incident, Mr. Rodriguez began suffering headaches and became fearful of leaving his home. He dropped out of school and stayed inside his house for several weeks, describing himself as a “couch potato.” He began using marijuana on a daily basis to self-medicate and it was during this period that he began selling small quantities of marijuana in the Eastchester Gardens projects as a means to finance his own marijuana purchases. He received no mental health treatment for his fears. Over the course of the spring and summer of 2013, he continued to stay at home, leaving primarily only to obtain marijuana and sell enough to fund his own need to smoke daily.

Towards the end of the summer, his former basketball coach, very concerned about what was happening to him, visited him and persuaded him to rejoin the basketball team. So, in September 2013, Lloyd Rodriguez began going to the gym every day, participated in the training regimen, gave up both his marijuana usage and dealing, and committed himself to basketball. The team was a competitive, traveling team and Mr. Rodriguez made a serious commitment to the team. When the basketball season ended in late January or early February, 2014, Mr. Rodriguez filled the void in his life by reverting to marijuana usage and dealing. This conduct continued for the next two and a half months when Mr. Rodriguez became the victim of violence yet again. This time, he was shot in the stomach. However, this attack was related to gang violence although Mr. Rodriguez was not the intended target.

On the evening of April 14, 2014, Lloyd was walking home from his grandmother's house, just a few blocks from his own home. En route, his brother Aaron drove by with a group of friends, but on seeing Lloyd, he jumped out of the car to walk with him back to their home. As they were nearing the house, Aaron told Lloyd that he thought that he (Aaron) was being shadowed. He instructed Lloyd to keep walking and to head straight home. Aaron, meanwhile, crossed to the other side of the street and continued walking home. The shadower, wearing a hoodie and a bandanna, also crossed the street following Aaron. As Lloyd was walking up the path to their house, he turned and saw Aaron about to come through the gate to their house and also saw the shadower right behind Aaron with a gun pointed at Aaron's head. He immediately ran back towards Aaron. The shot misfired and Aaron began running up the street. As Lloyd ran up, the shooter fired a second shot which struck Lloyd in the abdomen. Lloyd was hospitalized for four days. When he returned home, he ceased using and dealing marijuana and as soon as he was well enough to travel, hix mother sent him to Virginia to spend the rest of the spring and summer with a former partner and friend who had acted as a surrogate father to Lloyd. While in Virginia and away from the turmoil of the Eastchester Garden neighborhood, Lloyd gave thought to the direction his life had taken and decided that he should re-enroll in school and finish his high school education. When he returned to the Bronx in the fall of 2014, he enrolled at the Satellite Academy in the Bronx and successfully graduated from that school in February 2016 at the very top of his class. Then, during the late fall and winter of 2014-2015, he resumed selling marijuana on a somewhat limited basis, but his involvement escalated considerably over the spring and summer of 2015 when school had ended and then continued on a reduced scale when school resumed in September 2015. when school had ended.

After he graduated from the Satellite Academy in February, 2016, he again decided to take positive steps for his life. He was interested in becoming a New York City corrections officer but was informed that he would need two years of college in order to apply. He then learned that he could pursue this career in Virginia where there was no college requirement. Thus, in March, 2016, he moved from the Bronx to Virginia to live with his uncle, abruptly ceasing all involvement in the distribution of marijuana. In Virginia, his uncle helped him obtain employment with a building maintenance company while he studied to take the Virginia Department of Correction entrance exam. As noted in the PSR, this maintenance company informed Probation that they would rehire him as he was very reliable. See PSR ¶ 118. While in Virginia, he learned of the instant indictment naming him and returned voluntarily to New York, self-surrendering on June 27, 2016.

While in custody at the MDC, he has worked on his unit and participated in a health education course and art classes. Certificated for the courses he completed are attached hereto as Exhibit A.

3. The Remaining Factors of 18 U.S.C. §3553(a)

a. Individual Deterrence

The instant case is Mr. Rodriguez' first conviction. Undoubtedly, Mr. Rodriguez' focus on attending high school and playing basketball throughout his years in middle school and his first three years of high school has helped him avoid the perils that befall so may of the youth in his neighborhood.

His own motivation to develop a career when he graduated high school and his decision to forego continuing involvement in marijuana distribution in favor of pursuing a career and legitimate employment bode well for the future of this young man. Since his plans to become a correction officer are now derailed because of this conviction, he has given considerable thought to alternate realistic career goals. He has expressed a desire to study business management in college and at the same time, pursue vocational training as an apprentice plumber or electrician so that he can eventually develop his own business.

He has the unqualified support of his mother, his twin sister who is also pursuing a college degree and his older siblings. Given his very young age at the time of his involvement in this offense, (beginning when he was still in high school and ending effectively as soon as he graduated), it is submitted that Mr. Rodriguez is now well on the way to becoming a law abiding, productive citizen.

b. Need for Educational or Vocational Training and Medical or Substance Abuse Treatment

Mr. Rodriguez does not need further incarceration in order to receive educational or vocational training. He has demonstrated his ability to obtain this himself. Nor does he need further incarceration to receive substance abuse treatment. Should he revert to marijuana usage, the Probation Department has adequate means to address these issues without incarceration.

c. General Deterrence

Although incarceration sends a strong message of general deterrence, Mr. Rodriguez does not fact a mandatory minimum sentence which is a congressional message of deterrence. He has spent the past 10 months in custody and he has lost the ability to pursue the career path he had recently chosen. His felony conviction in this case will also limit his career options in the future.

IV. A REASONABLE SENTENCE

It is respectfully submitted that given all the facts and circumstances of this case, as detailed herein and in the PSR, a sentence of time served would constitute a reasonable sentence.

Mr. Rodriguez' guideline sentencing range is 21-27 months. Using a 21 month sentence as base, with an allowance for good time, he would be required to serve 17 ½ months. He would be eligible for release to a halfway house when he had actually served a total of 15 months.

He has currently served 10 months in custody. Factoring in a good time allowance of 15%, this is the equivalent of a sentence of one year and a day.

However, in light of the following 18 U.S.C. § 3553(a) factors:

- Mr. Rodriguez' early acceptance of responsibility[2]
- his very young age at the time of the offense (18-20);
- his voluntary withdrawal from continued criminal involvement;
- the fact that he went back to school after dropping out and successfully completed his high school education;

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[2] At Mr. Rodriguez' first appearance before Your Honor (three months after the arrests of his co-defendants), the Court advised him that consideration would be given to those defendants who entered early pleas. Although, Mr. Rodriguez was not one of the first defendants to plead guilty, given his late entry into the case, his plea was, in fact, one of the most rapid.

- the proactive steps he took to move away from the neighborhood and pursue a legitimate career; and
- the fact that he was able to achieve these positive steps notwithstanding the turbulent years of his childhood,

it is respectfully submitted that a sentence of time served would constitute a just and reasonable sentence for Mr. Rodriguez.

V. CONCLUSION

For all of the reasons set forth herein,, it is respectfully submitted that defendant Lloyd Rodriguez should receive a sentence of time served.

Dated: New York, New York
April 20, 2017

Respectfully submitted,

/s/

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